IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5320 OF 2006

Shri Vitthal Pundalik Chopade)
Age 30 years, Occ: Service)
R/o. 10/417, Ghorpade Mala,)
Vikramnagar, Ichalkaranji) .....Petitioner

V/s

1. The State of Maharashtra)
Through Directorate of Educate)
Primary, Maharashtra State,)
Pune.)
)
2. Ichalkaranji Municipal Council)
Ichalkaranji.)
)
3. Primary Education Board,)
Ichalkaranji, having its Office)
at Ichalkaranji, Municipal Council,)
Ichalkaranji, District : Kolhapur)
)
4. Allabaksha Gulabsaheb Bargir)
Age 36 years, Occu : Business)
R/o. Hatti Chowk, Ichalkaranji)
District : Kolhapur) ....Respondents.

Shri P.S. Dani for the Petitioner.

Shri R.D. Rane, GP for the Respondent No.1.

Shri T.S. Ingle for the Respondent Nos. 2 and 3.

Shri M.L. Patil for the Respondent No.4.

ALONGWITH

WRIT PETITION NO. 5340 OF 2006

Allabaksha Gulabsaheb Bargir)
Age : 36 years, Occu : Business,)
R/o. Hatti Chowk, Ichalkaranji)
District Kolhapur)

V/s

1. The State of Maharashtra)
Through the Secretary, Primary)
Education & Sports Department,)
Mantralaya, Mumbai.)
)
2. Ichalkaranji Municipal Council)
Ichalkaranji.)
)
3. Primary Education Board)
Ichalkaranji, having its Office at)
Ichalkaranji Municipal Council)
Ichalkaranji, District Kolhapur)
)
4. Vitthal Pundalik Chopade)
Age : 30 years, Occu: Service,)
R/o. 10/417, Ghorpade Mala,)
Vikramnagar, Ichalkaranji) .....Respondents.

Shri M.L. Patil for the Petitioner.

Shri R.D. Rane, GP for the Respondent No.1.

Shri T.S. Ingle for the Respondent Nos. 2 and 3.

Shri P.S. Dani for the Respondent No.4.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 14th September, 2006

ORAL JUDGMENT: (Per V. M. Kanade, J.)

1. Both these Writ Petitions can be disposed of by a common judgment since the basic issue involved in both these Petitions is identical.

2. Brief facts which are relevant for the purpose of deciding the present Writ Petitions are as under:-

3. Petitioner in Writ Petition No. 5320 of 2006 is seeking a direction that the post of Chairman of the Primary Education Board - Respondent No.3, should not be occupied by respondent No.4 in the present Petition and that the Petitioner be declared as Chairman of the Respondent No.3. Respondent No.4 in the said Writ Petition is a Petitioner in Writ Petition No. 5340 of 2006 and he has challenged the Order passed by the Government which has held that Respondent No.4 in the first Petition and the Petitioner in the second Petition is not entitled to contest the election for the post of Chairman; he having remained absent for three consecutive meetings of the Board.

4. The election of the Municipal Council School Board was held in December, 2003 in which Allabaksha Bargir, the Petitioner in Writ Petition No. 5340 of 2006 and Vitthal Pundalik Chopade, the Petitioner in Writ Petition No.5320 of 2006 were elected (hereinafter, for the sake of convenience, both these petitioners shall be referred to by their respective names). Sometime, in March 2006 the Chairman and Vice Chairman of the Board resigned and on 17/03/2006, a meeting of the Board was held to elect the Chairman and the Vice Chairman. Both, Allabaksha Bargir and Vitthal Pundalik Chopade submitted their nominations for the post of Chairman. Allabaksha Bargir was elected as the Chairman of the Board. At the stage of scrutiny of nomination, Vitthal Pundalik Chopade submitted his objections to the nomination of Allabaksha Bargir. However, the said objections were not accepted.

5. Thereafter, on 29/07/2006, Allabaksha Bargir was informed by the Administrative Officer that the Government of Maharashtra had passed an order holding that he was disabled from continuing as a Chairman of the Board since

he had remained absent in three consecutive meetings of the Board. Allabaksha Bargir has filed Writ Petition No. 5340 of 2006 challenging the said Order passed by the Government, whereas Vitthal Pundalik Chopade has sought a direction by filing Writ Petition No.5320 of 2006 from this court that Allabaksha Bargir cannot continue as the Chairman of the Board.

6. By consent of parties, both these matters were heard together finally at the stage of admission. Hence, rule. Rule is made returnable forthwith. Respondents in respective Petitions waive service.

7. The learned Counsel appearing on behalf of Allabaksha Bargir submitted that the impugned order passed by the Government was *per se* illegal, since before passing the impugned order, the Government had not taken into consideration that the Board had granted permission to the Petitioner for non-attendance of the meetings and, therefore, he had not incurred any disability as provided under section 7 clause (1) of the Bombay Primary Education Act, 1947

(hereinafter referred to as “the said Act”). Shri Dani learned Counsel appearing on behalf of Shri Chopade submitted that Section 7(1) and (2) of the said Act clearly contemplated that the moment a member of the Board remained absent consecutively for three meetings, he incurs a disqualification or disability and, therefore, ceases to be a member of the Board. He submitted that if the provisions of section 7 are construed harmoniously, it is clear that the permission as contemplated in section 7(1) had to be obtained before remaining absent. He submitted that if such an interpretation is not given to the said provision, a member would continue to remain on the Board in spite of his absence consecutively for three meetings and can subsequently apply for permission from the Board. He submitted that if such an interpretation is not given to the said provision, the mischief which the said section sought to cure would continue to operate indefinitely as long as the complaint is not made against such an erring member of the Board. He submitted that this court should read down the said provision in the aforesaid manner, otherwise the said provision would be rendered nugatory. He submitted that

though the permission was obtained by Allabaksha Bargir subsequently and prior to the impugned order which was passed by the Government, the said permission would not be of any assistance to Allabaksha Bargir since it was obtained subsequently and, therefore, the Government was justified in ignoring the said permission which was granted while passing the impugned order.

8. We have given our anxious consideration to the submissions made by the learned Counsel on the either sides. The short question which falls for consideration is : whether the permission, as envisaged in section 7(1) which has to be granted by the Board, is to be obtained prior to the meeting which takes place or it can be obtained subsequently and, secondly, whether a disability, as envisaged in section 7 for non-attendance of the three consecutive meetings of the Board, accrues automatically after the member fails to attend three consecutive meetings or it accrues after the permission is not granted or obtained from the Board?

9. Before we consider the rival submissions, it would be relevant to consider the provisions of section 7 of the said Act. Section 7 reads as under:-

> "7. (1) If any member of a school board, during the term for which he has been elected, appointed or nominated,-
>
> [3][(a) absents himself from the meetings, during three successive months or from three consecutive meetings of the school board whichever period is longer without the [4]* permission of the Board, or]
>
> (b) becomes subject to any of the disqualifications mentioned in [5] [section 5] he shall be disabled from continuing to be a member of such board and his seat shall be deemed to be vacant:
>
> Provided that he shall not be deemed to have incurred any disqualification under clause (f) of section 5 by reason of his having any share or interest in any lease, sale or purchase of any immovable property or in any agreement for the same, if he has obtained the previous sanction of the [1] [State] Government to have such share or interest.

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3 This clause was substituted for the original by Bom. 46 of 1949, s.4
4 The word "previous" was deleted by Bom. 25 of 1952, s.3
5 This word and figure were substituted for the word and figure "section 6" by Bom.9 of 1951 s.3. Second Schedule.
1 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

> (2) If any question, dispute or doubt arises whether a vacancy has occurred under this section, the orders of the 1[State] Government shall be final for the purpose of deciding such question, dispute or doubt."

10. It is a well settled principle of interpretation of Statutes that a provision has to to be harmoniously construed, keeping in view the plain language and words used in the section and the mischief which it seeks to overcome. It is not open for the court to read something in the provision when such a meaning cannot be attributed to it on the plain reading of the provision. Section 7 was amended by section 3 of the Amendment Act 25 of 1952 and the word "previous" which was used in section 7(1)(a) before the word "permission" was deleted. Since the Legislature has deleted the word "previous" from the provision of section 7(1)(a), obviously, it is now not open for the Court to read the word "previous" in the said provision of section 7(1)(a). The submission of the learned Counsel appearing on behalf of Vitthal Pundalik Chopade, therefore, cannot be accepted. If such an interpretation is given to the provision of section 7 (1)(a), this Court would, in effect, set at naught the

amendment made to the said provision and thereby indirectly legislate by incorporating the word “previous” in the aforesaid section when it was expressly deleted by the legislative amendment. The submissions made by Shri Dani learned Counsel appearing on behalf of Shri Chopade therefore cannot be accepted. In the present case, it is an admitted position that the Board had granted permission to Shri Allabaksha Gulabsaheb Bargir, permitting his absence for three consecutive meetings of the Education Board. The said permission having been granted, the disability, as is mentioned in section 7(1)(b), no longer accrues as it has been specified in sub-clause (b) that the disability would accrue only if the permission is not granted by the Board. In the present case, the Board having granted the permission to the Petitioner - Allabaksha Gulabsaheb Bargir, disability did not accrue and, therefore, he continued to be a member of the Education Board. The State Government, while passing the impugned order, did not take into consideration the permission which was granted by the Board to the Petitioner - Allabaksha Gulabsaheb Bargir prior to the passing of the impugned order. The impugned order,

therefore, is illegal and will have to be set aside on that count alone.

11. In the result, Writ Petition filed by Allabaksha Gulabsaheb Bargir is allowed. The impugned Order dated 19/07/2006 issued by the Primary Education & Sports Department, Government of Maharashtra is set aside. Writ Petition No.5340 is made absolute in terms of prayer clause (b). Writ Petition No.5320/2006 is dismissed and the rule is discharged.

12. Both the Writ Petitions are disposed of in the above terms. In the circumstances, there shall be no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)